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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ARB.P. 2062/2024

KOTAK MAHINDRA PRIME LTD

.....Petitioner

Through: Mr. Kush Gupta, Advocate

versus

VIBHAV GUPTA

.....Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **03.04.2025**

1. The present petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 ('Act of 1996') seeking appointment of the Arbitrator for adjudication of disputes between the parties in terms of the Car Finance Agreement No. CF20703175 dated 30.08.2022 ('Car Finance Agreement') executed between the parties. It is stated that the Car Finance Agreement contains an Arbitration Clause '32' of the said agreement as applicable to the parties herein.
2. Schedule I of the Car Finance Agreement bears a stamp recording that the place of Arbitration will be Delhi.
3. It is stated that the Respondent approached the Petitioner Company to avail financial facility for the purchase of the vehicle and the hypothecation financing facility. It is stated that the Petitioner Company granted to the Respondent a loan of Rs. 10,07,788/- vide the Car Finance Agreement. It is stated that as per the agreement the Respondent agreed to repay the loan



amount with interest in 60 Equated Monthly Installments (EMIs) of Rs. 22,474/-.

4. It is stated that in terms of the Clause 5 of the Car Finance Agreement the subject matter vehicle is duly hypothecated by way of exclusive charge in favour of the Petitioner as a security for the due repayment of the said loan facility. It is stated that however, the Respondent failed to adhere to the financial discipline of repayment of the loan amount. And, pursuant to the continuous default the Petitioner Company issued Loan Recall Notice dated 13.09.2023, which was not adhered to by the Respondent.

5. It is stated that the Petitioner Company filed a petition under Section 9 of the Act of 1996 seeking interim relief of appointment of Receiver to take the physical possession of the hypothecated vehicle. And, said petition was allowed vide order dated 25.11.2023 by the Saket District Court. There is no averment in the petition with respect to the further proceedings qua the vehicle.

6. It is stated that thereafter, arbitration proceedings were initiated, however, the Respondent failed to appear before the Arbitral Tribunal and ex-parte award dated 27.02.2024 was passed by the Arbitral Tribunal.

7. It is stated that the Petitioner Company was informed by its counsel that the arbitral award dated 27.02.2024 is non-est and is not executable as the appointment of the arbitral tribunal was not done in accordance with law.

8. It is stated that thereafter, the Petitioner company issued fresh arbitration notice dated 17.07.2024 and the Respondent failed to comply with the terms of the said notice as well.

9. It is stated that in light of these facts the Petitioner Company is approaching this Court for appointment of Sole Arbitrator.



10. It is stated that Petitioner Company has evaluated the claim to the tune of Rs. 13,31,356.32/- on account of total foreclosure as on 08.07.2024.

Arguments of the Petitioner Company

11. Learned counsel for the Petitioner Company contends that service in this Petition on the Respondent has been duly affected and the affidavit of service has also been filed. He states that the Respondent has been duly served by the Petitioner through Speed post on 13.03.2025 and the same has been delivered to the Respondent on 17.03.2025 as per the Speed post receipts and tracking report. He states that the Respondent has been further served by Registry of this Court through email.

12. He states that the quantum of amount, which is the subject matter of the dispute is approximately Rs. 13.32 Lakhs i.e., the amount, which was outstanding as on the date of filing of the petition.

13. He states that the arbitration may be conducted under the aegis of the Delhi International Arbitration Centre (DIAC) and an Advocate be appointed as an Arbitrator considering the value of the claim amount involved.

Decision

14. Notice in the present petition was issued on 17.12.2024 and 17.02.2025 and the Respondent was directed to file the reply to the petition, which has not been filed. Due service on the Respondents by the Petitioner Company through DTDC Courier is reflected from affidavit of service filed. Further due service on Respondent by Registry of this Court through email is duly reflected from office noting. However, none has appeared on behalf of the Respondent in these proceedings.

15. Learned counsel for the Petitioner states that Respondents did not appear in Section 9 petition proceedings as well before the District Court.



16. Upon perusal of the Car Finance Agreement and Schedule I thereto, this Court is satisfied that the parties have agreed that the place of Arbitration will be Delhi.

17. A perusal of Clause 32 of the Car Finance Agreement shows that there exists an arbitration agreement between the parties and the said clause has been duly invoked by the Petitioner Company by issuing the notice invoking arbitration dated 17.07.2024.

18. In view of the aforesaid submission, considering the fact that the arbitration agreement forms part of the Car Finance Agreement and it is mentioned in the said Car Finance Agreement that a Sole Arbitrator is to be appointed for adjudication of the disputes, therefore, the present petition is allowed with the following directions:

(i) Mr. Rizwan, Advocate [Mobile No.: 9643349576, Email ID: rizwanoffice0506@gmail.com, Enrolment No.: D/1160/2012] is appointed as a Sole Arbitrator.

(ii) The arbitration will be held under the aegis of the DIAC. The remuneration of the Sole Arbitrator shall be in terms of the Schedule IV of the Act of 1996.

(iii) The Sole Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act of 1996 before entering into the reference.

(iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication of the Sole Arbitrator.

19. Learned Counsel for the Petitioner Company states that the Statement of Claim will be duly filed within four (4) weeks.



20. List for preliminary hearing to be presided over by the Sole Arbitrator on 05.05.2025 at 11:00 A.M.
21. The DIAC is directed to issue fresh notice to the Respondents for hearing dated 05.05.2025.
22. With the aforesaid direction, the petition stands disposed of.
23. The registry is directed to send a copy of this order to Secretary, DIAC for information and compliance and to the Sole Arbitrator.
24. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

APRIL 3, 2025/rhc